

Letter of Findings: 05-20200431
Cigarette Tax
For Tax Period January 2018 - August 2019

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Taxpayer failed to provide sufficient documentation to show the cigarette tax assessment is incorrect.

ISSUE

I. Cigarette Tax - Imposition.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-4; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Elmer v. Indiana Dep't of State Revenue*, 42 N.E.3d 185 (Ind. Tax Ct. 2015); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of cigarette taxes.

STATEMENT OF FACTS

Taxpayer is an out-of-state cigarette stamping distributor. Taxpayer stamps cigarettes for multiple states surrounding Indiana. As part of an audit, the Indiana Department of Revenue ("Department") made several adjustments to the Taxpayer's inventory and tax credits, which resulted in a net liability due for the tax period January 2018 through August 2019 ("Tax Years"). As a result, the Department issued proposed assessments to Taxpayer for additional cigarette tax and interest. Taxpayer protested the Department's proposed assessments, and an administrative hearing was held. This Letter of Findings results. Further facts will be supplied as necessary.

I. Cigarette Tax - Imposition.

DISCUSSION

Taxpayer argues that it should have credits for tax years 2018 and 2019. The Department informed Taxpayer that it had incorrectly filled out the CT-19. After amending the CT-19 the Department requested additional information regarding the stamp inventory adjustments made by Taxpayer. Taxpayer also claims it was not informed in a timely manner, which would have allowed it to correct its counting errors and to stop including the stamps attached to warehouse returns to manufacturers on its returns. Taxpayer claims it attempted to contact the Department about the preliminary audit report but by the time it did contact the Department, it was too late to make any changes to the audit.

The Department adjusted the reported tax paid credits which were based on returns of cigarettes from its customers to zero. The Department did this to correct Taxpayer's misreporting of those returns from its customers as tax paid credits when they should have been reported as negative sales tax paid. In the course of the protest process, Taxpayer provided documentation on this issue and agreed to the adjustment for eighteen of the twenty months. Taxpayer believes the Department's adjustments for July and August 2018 were in error. Taxpayer believes that the Department added the tax paid credit to the tax paid sales for these two months, while for the other months this was deducted from the tax paid sales.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid . . . The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East*,

Inc., 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer must provide documentation explaining and supporting his or her challenge that the Department's position is wrong.

It should be pointed out that "[e]very person subject to a listed tax must keep books and records so that the Department can determine the amount, if any, of the person's liability for tax by reviewing those books and records." IC § 6-8.1-5-4(a). In addition, IC § 6-8.1-5-4(c) provides that "[a] person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times." Without these records, the Department must rely on the best information available to determine tax liability. *Elmer v. Indiana Dep't of State Revenue*, 42 N.E.3d 185, 194 n.12 (Ind. Tax Ct. 2015).

Taxpayer provided a spreadsheet that it created to show inventory and monetary values. In addition, Taxpayer provided an explanation about how it handles returns and outdated or damaged products. However, Taxpayer failed to provide any documentation that tracks the inventory that comes in and out of its offsite warehouse. In fact, Taxpayer acknowledges that it has no way of tracking offsite returns. This documentation is required to verify Taxpayer's reported numbers and argument. Therefore, Taxpayer did not provide adequate records to the Department to support its claim under IC § 6-8.1-5-4(a). The Department is thus unable to verify the inventory that was claimed as returned to the offsite warehouse. Thus, Taxpayer has not met its burden under IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

October 21, 2021

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